

AMENDED IN ASSEMBLY APRIL 22, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2973

Introduced by Assembly Member Soto
(Coauthor: Assembly Member Ma)

February 22, 2008

An act to amend Section 244.5 of, and to add Chapter 4.5 (commencing with Section 12430) to Title 2 of Part 4 of, the Penal Code, relating to stun guns.

LEGISLATIVE COUNSEL'S DIGEST

AB 2973, as amended, Soto. Stun guns.

Existing law makes it a misdemeanor or a felony to assault a person, or to assault a peace officer or firefighter during the performance of his or her duties, as specified, with a stun gun or a taser. Existing law defines "stun gun" for this purpose as any item, except a taser, used or intended to be used as a weapon that is capable of temporarily immobilizing a person by infliction of an electrical charge.

This bill would eliminate the reference to a taser in the definition of "stun gun." It would instead make it a misdemeanor or felony to assault a person with a stun gun or remote stun gun, as defined, or to assault a peace officer or firefighter in the performance of his or her duties with a stun gun that is not a remote stun gun, and would make it a felony to commit an assault against a peace officer or firefighter in the performance of his or her duties with a remote stun gun, as specified.

By changing the definitions of crimes, the bill would impose a state-mandated local program.

This bill would also require any person selling a "permissible remote stun gun," as defined, to register the identity of the purchaser with the

manufacturer of the remote stun gun and would make a violation of that provision a misdemeanor. A person ~~with one or more specified attributes who is under 18 years of age~~ would be prohibited from purchasing, owning, carrying, using, or having in his or her possession a permissible remote stun gun. ~~In addition, the bill would make it a misdemeanor for a person to purchase, acquire, carry, use, or have in his or her possession any remote stun gun that is not a permissible remote stun gun, or to purchase or have in his or her possession an activated unregistered permissible remote stun gun, as specified.~~

By creating new crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 244.5 of the Penal Code is amended to
- 2 read:
- 3 244.5. (a) (1) As used in this section, “stun gun” means any
- 4 item used or intended to be used as either an offensive or defensive
- 5 weapon that is capable of temporarily immobilizing a person by
- 6 the infliction of an electrical charge.
- 7 (2) As used in this section, the definition of “remote stun gun”
- 8 in Section 12430 applies.
- 9 (b) Every person who commits an assault upon the person of
- 10 another with a stun gun or remote stun gun shall be punished by
- 11 imprisonment in a county jail for a term not exceeding one year,
- 12 or by imprisonment in the state prison for 16 months, two, or three
- 13 years.
- 14 (c) Every person who commits an assault upon the person of a
- 15 peace officer or firefighter with a stun gun that is not a remote stun
- 16 gun, who knows or reasonably should know that the person is a
- 17 peace officer or firefighter engaged in the performance of his or
- 18 her duties, when the peace officer or firefighter is engaged in the
- 19 performance of his or her duties, shall be punished by

1 imprisonment in the county jail for a term not exceeding one year,
2 or by imprisonment in the state prison for two, three, or four years.

3 (d) This section shall not be construed to preclude or in any way
4 limit the applicability of Section 245 in any criminal prosecution.

5 SEC. 2. Chapter 4.5 (commencing with Section 12430) is added
6 to Title 2 of Part 4 of the Penal Code, to read:

7
8 CHAPTER 4.5. REMOTE STUN GUNS
9

10 12430. As used in this chapter, the following terms apply:

11 (a) "Remote stun gun" means an electronic device that emits
12 an electrical charge and is designed and primarily employed to
13 incapacitate a person or animal either through contact with
14 electrodes on the device itself or remotely through wired probes
15 attached to the device, or through a spark, plasma, ionization, or
16 other conductive means emitting from the device.

17 (b) "Permissible remote stun gun" means a remote stun gun
18 having all of the following:

19 (1) An identification and tracking system that, in the course of
20 an investigation, can and shall be made available to any law
21 enforcement agency upon request.

22 (2) A training program offered by the manufacturer.

23 12431. (a) Any person selling a permissible remote stun gun
24 which is activated shall register the identity of the purchaser with
25 the manufacturer of the remote stun gun. The identification of the
26 purchaser shall be verified with a government-issued identification;
27 ~~or by verifying the address and last four digits of the social security~~
28 ~~number of the purchaser.~~ *identification.*

29 (b) ~~Each of the following persons is~~ *Persons who are under 18*
30 *years of age are* prohibited from purchasing, owning, carrying,
31 using, or having in his or her possession a permissible remote stun
32 ~~gun.~~ *gun.*

33 ~~(1) A person under the age of 18 years.~~

34 ~~(2) A person convicted of a felony offense.~~

35 ~~(3) A person who is required to register as a sex offender~~
36 ~~pursuant to Section 290.~~

37 ~~(4) A person who is on a federal terrorist watch list.~~

38 ~~(c) Failure of a seller to properly register the identity of a~~
39 ~~purchaser is a misdemeanor, punishable by a fine not to exceed~~
40 ~~one thousand dollars (\$1,000).~~

1 ~~(d) Any person purchasing and possessing a permissible remote~~
2 ~~stun gun that is inactive shall register that device with the~~
3 ~~manufacturer prior to activation. The identification of the purchaser~~
4 ~~shall be verified as specified in subdivision (a).~~

5 ~~12432. (a) Any person who purchases, acquires, carries, uses,~~
6 ~~or has in his or her possession a remote stun gun, which is not a~~
7 ~~permissible remote stun gun, is guilty of a misdemeanor.~~

8 ~~(b) Any person who purchases, or has in his or her possession,~~
9 ~~an activated unregistered permissible remote stun gun is guilty of~~
10 ~~a misdemeanor.~~

11 12433. Any person who commits an assault *with a remote stun*
12 *gun* upon the person of a peace officer or firefighter, who knows
13 or reasonably should know that the person is a peace officer or
14 firefighter engaged in the performance of his or her duties when
15 the peace officer or firefighter is engaged in the performance of
16 his or her duties, ~~with a remote stun gun~~ is guilty of a felony,
17 punishable by imprisonment in the state prison for two, three, or
18 four years.

19 SEC. 3. No reimbursement is required by this act pursuant to
20 Section 6 of Article XIII B of the California Constitution because
21 the only costs that may be incurred by a local agency or school
22 district will be incurred because this act creates a new crime or
23 infraction, eliminates a crime or infraction, or changes the penalty
24 for a crime or infraction, within the meaning of Section 17556 of
25 the Government Code, or changes the definition of a crime within
26 the meaning of Section 6 of Article XIII B of the California
27 Constitution.